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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO

JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,	) Case No. CV 07-05568 JSW
	)
	) <b>MEMORANDUM OF POINTS AND</b>
	) <b>AUTHORITIES IN SUPPORT OF</b>
Plaintiff	) <b>PLAINTIFF'S MOTION FOR</b>
v.	) <b>PARTIAL LIFT OF STAY AS TO</b>
	) <b>DEFENDANT LEGACY SUPPORT</b>
DIGITAL NETWORKS NORTH	) <b>SERVICES FOR PURPOSES OF</b>
AMERICA, INC., a Delaware	) <b>ENTERING DEFAULT</b>
corporation; LEGACY SUPPORT	)
SERVICES, LTD. d/b/a S2G; and DOES	) Date: June 13, 2008
1-100,	) Time: 9:00 a.m.
	) Courtroom 2, 17 <sup>th</sup> Floor
Defendants.	) Judge: Hon. Jeffrey S. White
	)
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## INTRODUCTION

The court should exercise its inherent authority to grant an exception to the stay entered on January 16, 2008 for the following limited purpose:

Requesting and entering default against defendant Legacy Support Services, Ltd. ("Legacy"), a party that defaulted just days prior to entry of the stay order.

## FACTUAL SUMMARY

On November 27, 2007, Plaintiff filed an Amended Complaint for patent infringement against Digital Networks North America, Inc. ("DNNA"), Legacy, and DOES 1-100. Docket #1. On December 11, 2007 DNNA (and no other defendant) moved for a stay pending reexamination of the patent at issue. Docket # 24, 28.

On December 13, 2007 Service was affected on Legacy via certified mail. Docket # 40. Pursuant to Fed.R.Civ.P. § 4(e)(1) and *California Code of Civil Procedure* § 415.40, Legacy was required to answer by January 13, 2008 (service is effective 10 days after mailing; response time is 20 days later).

Legacy failed to answer or otherwise appear in this action on or before January 13, 2008. *See* Docket Report. On January 16, 2008, before Plaintiff had an opportunity to request entry of default against Legacy, this Court issued a stay. Docket # 39.

## ARGUMENT

Courts have "broad discretion to stay proceedings as an incident to its power to control its own docket." *Boyle v. County of Kern*, 2008 U.S. Dist. LEXIS 5592 at \*16 quoting *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. North American Co.*, 299 U.S. 248 (1936)). "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."

1 *Boyle v. County of Kern*, *supra* at 16 quoting *Landis*, *supra* at 254.

2 Along with the power to grant a stay, courts have the inherent power to lift a  
3 stay or grant an exception to a stay for limited purposes. *Boyle v. County of Kern*,  
4 *supra*, at 16 citing *Canady v. Erbe Elektromedizin, GmbH*, 271 F. Supp 2d 64, 74  
5 (D.D.C. 2002) (citing *Purolite Int'l, Ltd. v. Rohm & Haas Co.*, 24 U.S.P.Q. 2d 1857  
6 (E.D. Pa. 1992), and *Rohm & Haas Co. v. Brotech Corp.*, 24 U.S.P.Q. 2d 1369 (D.  
7 Del. 1992)).

8 For the reasons set forth herein, Plaintiff respectfully requests the Court to  
9 utilize its inherent power to grant an exception to stay for the limited purpose  
10 requested.

11  
12 I. COURTS WILL GRANT A LIFT OF STAY WHERE THE  
13 CIRCUMSTANCES HAVE CHANGED SUCH THAT THE PREVIOUSLY  
14 IMPOSED STAY IS UNWARRANTED OR INAPPROPRIATE.

15 The general rule is that a lift of stay may be granted “when circumstances have  
16 changed such that the court’s reasons for imposing the stay no longer exist or are  
17 inappropriate . . .” *Canady v. Erbe Elektromedizin, GmbH*, *supra*, at 74 (citing  
18 *Purolite Int'l, Ltd. V. Rohm & Haas Co.*, *supra*, and *Rohm & Haas Co. v. Brotech*  
19 *Corp.*, *supra*. See *Marsh v. Johnson*, 263 F. Supp 2d 49 (2003).

20 In *Marsh v. Johnson*, the court granted lift of stay “after consideration of the  
21 parties’ submissions, the relevant law and the record . . .” *supra* at 50-51. The court  
22 held circumstances previously requiring the stay changed; thus, the reasons for  
23 imposing the stay no longer existed or were inappropriate. *Id.* at 52. The court lifted  
24 the stay. *Id.* at 52-53.

25 II. CHANGED CIRCUMSTANCES IN THIS CASE WARRANT  
26 A PARTIAL LIFT OF STAY

27 In this case, circumstances have changed since the motion for stay was  
28 briefed. Legacy failed to timely answer or otherwise appear in this action, rendering

1 Legacy in default, *after* the motion to stay had been submitted to the Court. This  
2 changed circumstance favors a grant of a partial lift of stay for limited proceedings  
3 that do not impact DNNA, the party that requested stay, at all.

4 Some courts examine the following three factors when deciding whether to lift  
5 a stay (the same factors used in determining whether to issue a stay): (1) the stage of  
6 litigation; (2) whether a stay would cause undue prejudice or present a clear  
7 disadvantage to the non-moving party; and (3) whether a stay will simplify the issues  
8 and streamline litigation. *See Atlantic Constr. Fabrics, Inc. v. Metrochem, Inc.*, 2007  
9 U.S. Dist. LEXIS 77205).

10 In issuing the Stay in this action the Court considered the above three factors.  
11 *See* Docket # 39. The same three factors support granting the requested partial lift of  
12 stay.

13 A. Stage of Litigation.

14 The litigation against Legacy is almost completed. Having failed to file an  
15 answer or otherwise appear in this action (Legacy did not join the motion for stay),  
16 Legacy defaulted. Plaintiff is merely seeking to have the clerk enter default, and  
17 have a damages prove-up hearing scheduled to finalize a default judgment. There is  
18 no need to stay this case as to Legacy.

19 B. Undue Prejudice to the Plaintiff.

20 This factor will weigh in favor of granting a lift of stay where maintaining the  
21 stay will unduly prejudice the nonmoving party. *See Atlantic Constr. Fabrics, Inc. v.*  
22 *Metrochem, Inc.*, 2007 U.S. Dist. LEXIS 77205 at \*6-7.

23 The entry of the stay came only days after Legacy's deadline to answer.  
24 Plaintiff's entitlement to an entry of default was thereby taken away almost  
25 immediately upon it becoming available, unduly prejudicing Plaintiff. Allowing  
26 Plaintiff the opportunity to enter default and obtain a default judgment by granting an  
27 exception to the stay will remedy this prejudice.

1           C.    Streamlining Litigation.

2           Where litigation will be streamlined and issues will be simplified, a lift of stay  
3 or exception to the stay is warranted. *See Atlantic Constr. Fabrics, Inc. v.*  
4 *Metrochem, Inc.*, 2007 U.S. Dist. LEXIS 77205 at \*7-8.

5           Plaintiff intends to request entry of default and a damages prove-up hearing  
6 upon being granted leave by the Court to do so. This will streamline this litigation  
7 by resolving the issue of liability as to one defendant and rapidly determining  
8 damages as to that defendant.

9  
10                                   **CONCLUSION**

11           Circumstances have changed since the briefing that resulted in a stay,  
12 rendering a partial lift of stay as to a non-appearing Defendant appropriate at this  
13 time.

14           Defendant Legacy defaulted just days before stay was entered, but Plaintiff  
15 has not yet been able to reduce that default to judgment. Plaintiff should be granted  
16 the ability to wrap up this portion of the suit forthwith.

17           Failure to allow this partial lift of stay will greatly prejudice Plaintiff, and  
18 granting this partial lift will not negatively impact the single appearing defendant,  
19 DNNA, in any manner.

20           Under these circumstances, the Court should utilize its inherent power to  
21 grant a partial lift of stay for the limited purposes of obtaining entry of default, a  
22 damages prove-up hearing, and entry of a default judgment against Defendant  
23 Legacy Support Services, Ltd.

1 DATED this Tuesday, April 15, 2008.

2  
3 JENS ERIK SORENSEN, as Trustee of  
4 SORENSEN RESEARCH AND DEVELOPMENT  
TRUST, Plaintiff

5  
6 /s/ Melody A. Kramer

7 J. Michael Kaler, Esq.

8 Melody A. Kramer, Esq.

9 Attorneys for Plaintiff